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AQUA LOGISTICS PTE LTD

v.

SASACOM SDN BHD

B

HIGH COURT SABAH & SARAWAK, KUCHING
HAMID SULTAN ABU BACKER JC
[SUIT NO: 22-80-2003-II]
31 JANUARY 2008

C ***CONTRACT:*** *Claim for moneys owing - Goods sold and delivered - Allegation of - Passing of ownership from seller to buyer - Whether transaction complied with Sale of Goods Act 1957 - Whether plaintiff established agreed place of delivery and price of goods - Whether plaintiff's claim dismissed - Sale of Goods Act 1957, s. 19(2)*

D

The plaintiff herein claimed for goods sold and delivered to the defendant amounting to Singapore dollars S$131,056.44. The plaintiff, a Singapore company, had supplied goods to the defendant. The plaintiff's claim was premised on four invoices, namely invoice nos. 5273, 5581, 5300 and 5350. The defendant E did not dispute invoice no.5273 for the sum of S$708 and invoice no. 5581 for the sum of S$5,581 and consented to pay the same amounting to the sum of S$6,289. The plaintiff contended that there was a valid contract for sale under invoice nos. 5300 and 5350 and the goods under the said invoices were all goods which F the defendant had ordered *via* numerous exchanges of faxes, verbal communications and dealings. Further, the goods under invoices 5300 and 5350 were delivered to the defendant upon its instructions through its appointed agent Cavan International Pte Ltd c/o Chua Brothers Transportation and Warehousing and G Famous Freight Forwarders (S) Pte Ltd respectively. According to the plaintiff, the defendant had not protested against the plaintiff's statement of account on numerous occasions when sent with copies of the same. In addition, some of the invoices in these series of transactions have been paid for by the defendant. H However, the defendant disputed the plaintiff's invoice nos. 5300 and 5350 on the grounds that the defendant had never ordered the goods under invoices nos. 5300 and 5350 and that there was no agreement between plaintiff and defendant on the sale and I purchase of the goods under plaintiff's alleged invoices. According to the defendant, Cavan International Pte Ltd, Chua Brothers Transportation and Warehousing and Famous Freight Forwarders (S) Pte Ltd were never instructed and were never authorized by

the defendant to deal with or accept delivery of the goods allegedly delivered under the plaintiff's invoice nos. 5300 and 5350. Hence, the defendant argued that it was not indebted to the plaintiff for the goods under its alleged invoice nos. 5300 and 5350.

Held (dismissing plaintiff's claim):

(1) The passing of ownership from seller to buyer in a contract of sale of goods is essential. The time of transfer of ownership is important to decide with whom the risk lay. The contract is deemed to be completed or performed upon delivery and acceptance of the goods by the buyer and receipt from the seller. Actual delivery is deemed to have taken place if the goods are handed over to the buyer or his authorized agent or anything has been done which has the effect of putting the goods in the possession of the buyer or his agent. The transaction in this case was not strictly complied and done within the spirit and intent of the Sale of Goods Act 1957 (SGA 1957) in Malaysia and/or its alike in Singapore. Further, there was evidence that the dealings lacked of moral probity in the transaction. From evidence adduced, goods were never delivered in Malaysia. Further, there was evidence to show that the goods were also not delivered to Cavan International Ptd Ltd. (paras 9 & 11)

(2) Section 19 of SGA 1957 gives effect to the elementary principle of the law of contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, or the time of payment of price or even the time of making of the contract. It all depends upon the intention of the parties. It was therefore the duty of the court to ascertain the intention of the parties and in so doing the courts have to be guided by the principles laid down in s. 19(2) which provides that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. (para 11)

(3) The defendant had never authorized the plaintiff to deliver the goods to Chua Brothers Transportation and/or Famous Freight Forwarders (S) Pte Ltd. The plaintiff had not called a witness Cavan International Pte Ltd and/or named them as a party to the suit. The place of delivery was essential for the plaintiff to

succeed against the defendant. The legal burden was on the plaintiff to establish the agreed place of delivery and the price of goods. The plaintiff had failed to do so. Further, there was also evidence adduced by the plaintiff themselves that the goods have not left Singapore and as a result they have arranged inspection of goods in Singapore. (para 12)

Case(s) referred to:
Agricultural Market Committee v. Shalimar Chemical Works Ltd [1997] 5 SCC 516 ***(refd)***
Mc Entire v. Crossley Bros Ltd [1895] AC 457 ***(refd)***
The Moorcock [1889] 14 PD 64 ***(refd)***

Legislation referred to:
Sale of Goods Act 1957, s. 19(2)

For the plaintiff - Victor Ng; M/s Tang & Partners
For the defendant - William Kong; M/s William Kong & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Hamid Sultan Abu Backer JC:

[1] This is my judgment in respect of the plaintiff's claim for goods sold and delivered to the defendant amounting to Singapore dollars S$131,056.44.

Brief Facts

[2] The plaintiff, a Singapore company has supplied goods to the defendant. The plaintiff's claim is premised on four invoices, namely invoice nos. 5273, 5581, 5300 and 5350. The defendant does not dispute invoice no. 5273 for the sum of S$708 and invoice no. 5581 for the sum of S$5,581 and consents to pay the same amounting to the sum of S$6,289 save that they say interests ought not be allowed as the plaintiff has not furnished them with the original invoice and payment will only be made upon receipt of the original invoice.

[3] The plaintiff contends that (i) there is a valid contract of sale for the goods under invoice nos. 5300 and 5350. (ii) the goods under invoice nos. 5300 and 5350 were all goods which the defendant has ordered *via* numerous exchanges of faxes, verbal communications as the plaintiff and defendant had been doing

through previous dealings, by way of amendments of quotations and invoices, re-coding of invoices at the defendant's request, as the orders were verbally asked to be amended, (iii) invoice no. 5300 is a re-coded invoice for some of the goods in invoice no. 5176. (iv) invoice no. 5350 is a re-coded invoice for invoice no. 5174 in order to accommodate the defendant's request for amendments to the orders and also the nature of the transaction, in which the source of the goods would come from multiple global sources, (v) the goods under invoice nos. 5300 and 5350 were delivered to the defendant upon its instruction(s) through its appointed agent, Cavan International Pte Ltd c/o Chua Brothers Transportation and Warehousing and Famous Freight Forwarders (S) Pte Ltd respectively, (vi) invoice nos. 5300 and 5350 were sent to the defendant by fax and post and payment was demanded and the defendant refused to pay. (vii) the previous course of conduct in ordinary course of business and series of past transactions and also contemporaneous transactions between plaintiff and defendant will indicate that it is the usual method of business dealing between the plaintiff and defendant for orders to be amended and adjusted at the defendant's election, (viii) furthermore, the delivery of the goods under invoice no. 5301 at the same time as the goods under invoice no. 5300 through Cavan International Pte Ltd will indicate that indeed the defendant did order the goods under invoice no. 5300. (ix) no protest from the defendant or the defendant's agent were made when the goods were delivered. The defendant never protested against the plaintiff's statement of account on numerous occasions when sent with copies of the same. In addition, some of the invoices in these series of transactions have been paid for by the defendant. This will indicate that the transactions must be taken as a whole rather than in isolation.

[4] The defendant disputes the plaintiff's invoice nos. 5300 and 5350 on the grounds: (a) the plaintiff never quoted the goods under invoice nos. 5300 and 5350 to defendant, (b) the defendant never ordered the goods under invoice nos. 5300 and 5350. (c) there was no agreement between plaintiff and defendant on the sale and purchase of the goods under plaintiff's alleged invoice nos. 5300 and 5350. (d) Cavan International Pte Ltd, Chua Brothers Transportation & Warehousing & Famous Freight Forwarders (S) Pte Ltd were never instructed and were never authorized by the defendant to deal with or accept delivery of the goods allegedly delivered under plaintiff's invoice nos. 5300 and

5350. (e) the goods, if delivered, by plaintiff to Cavan International Pte Ltd., Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd, were delivered without the defendant's consent or knowledge. (f) furthermore, for invoice no. 5350, the goods under invoice no. 5350 were the same as the goods under plaintiff's own invoice no. 5174(R). (g) invoice no. 5350 is a duplicity. The defendant was under the impression that the goods were in Singapore due to plaintiff's Chew Boon Pin's representation and statements. The defendant obliged to assist the plaintiff to recover its alleged goods when plaintiff first offered to take back and later requested for inspection. (h) the goods under invoice nos. 5300 and 5350 were never ordered and never agreed to be purchased by defendant. (i) the defendant is not indebted to the plaintiff for the goods under its alleged invoice nos. 5300 and 5350.

[5] At the commencement of the hearing, parties have agreed that the case can be heard: (i) witness statement for examination in chief; (ii) preliminary cross-examination witness statement, with full liberty to further cross-examine orally (for purposes of cross-examination); (iii) preliminary re-examination statement with full liberty to further re-examination if there is further oral examination.

[6] The court is extremely grateful to the parties for agreeing to such a mode as the preliminary cross-examination witness statement will save much of the court's time to deal with peripheral matters and for all practical purpose, preliminary cross-examination witness statement will stand as interrogatories and answers thereto only, as the right of oral cross-examination to the litigant is preserved during the whole trial.

[7] The plaintiff called four witnesses and the defendant two witnesses. The 1st witness was the plaintiff's managing director who had handled the transaction with the defendant through their director, DW1, the 1st witness for the defence. PW1 asserted that the goods were in fact ordered by the defendant, and that the goods were all delivered to the defendant's agent, *Cavan International Pte Ltd c/o Chua Brothers Transportation and Warehousing (for invoice no. 5300) and Famous Freight Forwarders (S) Pte Ltd (for invoice no. 5350)*. (emphasis added). PW2 who was the manager of Antah Forwarders asserted that the goods in invoice no. 5300 was delivered to Cavan International Pte. Ltd. in *Singapore c/o Chua Brothers Transportation & Warehousing*. (emphasis added). PW3 said that his company was appointed agents for the plaintiff

to arrange for goods under invoice no. 5350 to be forwarded to the defendant's agent, Cavan International Pte Ltd c/o Famous Freight Forwarding (S) Pte Ltd. PW4 who was the staff of the plaintiff said that she had communicated with Mr. Mark Neo of Cavan International Pte Ltd regarding the status of the goods. That part of the witness statement reads as follows:

> 3. That I did on 04.07.2007, compose an email to Mark Neo of Cavan International Pte Ltd (Refer to Page 163 to 164 of Plaintiff's Bundle of Documents (hereinafter referred to as "PBOD").
>
> 4. That I did on 06.07.2007, receive a reply from Mark Neo *via* email informing me that:
>
> (a) All the goods sent to Chua Brothers Transportation & Warehousing have been shipped out;
>
> (b) That some of the goods sent to Famous Freight Forwarding have not been shipped, pending instructions from Sasacom Sdn. Bhd.
>
> (Refer to Page 163 to 164 of Plaintiff's Bundle of Documents (hereinafter referred to as "PBOD").

[8] The defendant's main witness DW1 denies any liability on the invoice nos. 5300 and 5350 on the grounds they never ordered the said goods or that was it ever delivered or even if it was delivered, it was related to goods supplied earlier. Very importantly the DW1 says they do not know who Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd are. The relevant part of the witness statement reads as follows:

> 28. I do not state that the Defendant is not indebted to the Plaintiff under the Plaintiff's alleged invoices no. 5300 and 5350 because:
>
> (a) the Plaintiff never quoted to the Defendant for the goods alleged under the Plaintiff's invoices no. 5300 and 5350.
>
> (b) the Defendant never placed any order for the goods under the Plaintiff's alleged invoices no. 5300 and 5350 with the Plaintiff.
>
> (c) there was no agreement on the sale and purchase, prices, delivery dates, etc, between Plaintiff and Defendant on the sale and purchase of the alleged goods under the alleged invoices no. 5300 and 5350.

A (d) the alleged goods under the Plaintiff's alleged invoices no. 5300 and 5350, if delivered, were delivered without the Defendant's knowledge and consent to Cavan International Pte Ltd, Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd.

B

(e) Cavan International Pte Ltd and Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd were not forwarding agents of the Defendant for the alleged goods under the alleged
C invoices no. 5300 and 5350 because the Defendant never instructed and never authorized Cavan International Pte Ltd, Chua Brothers Transportation & Warehousing and Famous Freight Forwarders (S) Pte Ltd to take or accept delivery of the alleged goods alleged under the Plaintiff's alleged invoices no. 5300 and 5350.

D

(f) if the alleged goods under the Plaintiff's alleged invoices no. 5300 and 5350 were delivered to Cavan International Pte Ltd, Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd, they were delivered without the Defendant's knowledge and
E consent.

(g) the Defendant never claimed ownership to the alleged goods under the Plaintiff's alleged invoices no. 5300 and 5350.

F

(h) Cavan International Pte Ltd, Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd had never claimed from the Defendant any charges or costs on the alleged goods under the Plaintiff's alleged invoices no. 5300 and 5350.

G

29. I had never gave a "blanket" or "once off" instruction to Cavan International Pte Ltd to handle all the shipments of the Defendant's cargoes. Cavan International Pte Ltd was only instructed for the shipment of the goods ordered in December, 2000.

H

30(a) I do not know and do not understand what is the coding stated by Chew Boon Pin and what is the change of coding alleged by Chew Boon Pin.

(b) I did not change and did not tell the Plaintiff or Chew
I Boon Pin to change the particulars of the goods agreed and ordered by the Defendant and as invoiced by the Plaintiff in their invoices dated in December 2000.

31(a) I do refer to Page 95 of Exhibit P1 and I do say that Cavan International Pte Ltd acted for Aqua Logistics Pte Ltd in that Shipping Order/Instruction.

(b) I do say that Mr. Edmund Chua, the Plaintiff's 3rd witness was lying when he gave evidence that when Cavan International Pte Ltd acted for the Defendant, Cavan may not have only 1 shipment for the Defendant and so inserted the Plaintiff's name as shipper because there was never such practice in all my dealings with the Plaintiff and Cavan International Pte Ltd and at that time, the Defendant only arranged 1 shipment for all goods supplied by the Plaintiff in December, 2000.

32. Cavan International Pte Ltd, Chua Brothers Transportation & Warehousing and or Famous Freight Forwarders (S) Pte Ltd had never contacted me and the Defendant on the alleged goods or their warehousing charges or their costs and fees.

33. I only started to contact Cavan International Pte Ltd when the Plaintiff informed the Defendant that the Plaintiff wanted to take back the alleged goods.

34. There was a lot of delay in the Plaintiff's inspection of the alleged goods because the Defendant can only request Cavan International Pte Ltd to liaise or deal with the Plaintiff on the Plaintiff's alleged goods because Cavan International Pte Ltd was not the Defendant's forwarding agent for the Plaintiff's alleged goods. So, the Defendant has no authority to instruct Cavan International Pte Ltd because the Defendant is not the owner and has no authority over the Plaintiff's alleged goods.

35(a) I do also state that the additional reason that the Plaintiff's alleged outstanding invoice no. 5350 is not due from the Defendant because it is a duplicity of its own invoice no. 5174 (R) dated 30.12.2000 (Page 42 of Defendant's Bundle of Documents) because the Plaintiff's alleged invoices no. 5174 (R) which the Defendant had fully paid refer to the same goods as alleged under the Plaintiff's alleged outstanding invoice no. 5350.

(b) The Plaintiff's said invoice no. 5174 (R) had been fully paid by the Defendant.

(c) The Defendant should not claim for the said same sum for the same goods again under its now alleged invoice no. 5350.

36. I do say that even though the Defendant had admitted to the sums due under the Plaintiff's invoices no. 5273 and 5581 for S$708 and S$8,494.00 since the filing of its Defence, the Plaintiff until to date had not tendered the original invoices no. 5273 and 5581 for payments. The original invoices are required for accounting and auditing purposes. Therefore, the Defendant should only be ordered to pay the said sums without interest and without costs of this suit.

37. I do again say that the Defendant is not indebted to the Plaintiff for the sums alleged under the Plaintiff's invoices no. 5300 and 5350 and I do ask for the said claims be dismissed with costs to the Defendant.

[9] The plaintiff's counsel in the opening speech says this is a simple case. After having heard the evidence I do not think so. The transaction in this case was not strictly complied and done within the spirit and intent of the Sale of Goods Act 1957 (SGA 1957) in Malaysia and/or its alike in Singapore. Further, there are evidence of dealings which also indicates lack of moral probity in the transaction, which was disclosed in the plaintiff's witness statement where the plaintiff says:

On or about the dates of the TWO (2) Bank Drafts from the Defendant to the Plaintiff, Mr. CM. Kin came to see me personally in my office to hand TWO (2 Bank Drafts to me (Refer to Page 49 of Defendant's Bundle of Documents). At his request when Mr. CM. Kiu was in my office, the Plaintiff gave a discount to Invoice No. 5176 (R1) to the sum of S$96,990.54. Mr. CM. Kiu told me that he wanted to pay Invoice No. 5176 (R1) but his office staff had mistakenly prepared TWO (2) Bank Drafts for the total sum of $S509,463.33. So Mr. CM Kiu then told me that he wanted to pay for Invoice 5176 (R1) in the sum of $S96,990.54 after discount and that the balance of $S412,472.79 to be paid to him for and on behalf of Sasacom Sdn. Bhd. He reassured me that he is authorized to do so and he will remit this sum to Sasacom Sdn. Bhd. subsequently. I trusted him on his oral promise and thereafter effected payment by the Plaintiff to Mr. CM. Kiu for the sum of S$412,472.79 on 22.02.2001 (Few days after dates of Bank Drafts) (Refer to Page 1 of Plaintiff's Supplementary Bundle of Documents No. 7 "PBOD7"). I would not question how he runs his business. Furthermore, I had no reason to distrust him at that juncture. As far as the Plaintiff is concerned, it has paid out the excess of funds that it had received from the Defendant. After this incident,

> I allowed more flexibility in the terms of payment with the Defendant as a sign of trust. Before the Plaintiff this payment, Mr. CM. Kiu when he was in the Plaintiff's office, jotted down on a piece of paper the calculations of the balance of money the Plaintiff is to pay to him for and on behalf of the Defendant (Refer to Page 2 of PBOD7). Mr. CM. Kiu also promised me that the Defendant will make payment for the other Invoices which remain outstanding to the Plaintiff. The Plaintiff's Official Receipt Ref. R-4427 was issued on 19.02-2001 (Refer to Item No. 19, Page 74 PBOD).

I do not wish to comment on this evidence and other evidence related to this save that such practice may have not only breached laws in Singapore but as well as laws in Malaysia.

The Law

[10] The law relating to SAG 1957 is well settled in almost all the common law jurisdiction. In Malaysia as well as Singapore, the Sale of Goods Act of respective countries govern sale of goods transaction. Thus, the common law relating to contracts and cause of conduct of commercial transaction to sale of goods has been vastly modified and/or restricted. Thus cases, such as *The Moorcock* [1889] 14 PD 64 to show the cause of conduct, of business transaction may not be applicable if it is not consistent with the SGA 1957. The seller under the SGA 1957 will be entitled to claim the price for the goods sold if he strictly complies with the provisions under the SGA 1957.

[11] In this case, the real dispute is that the defendant had not received the goods even though there was evidence to show that if goods were delivered to Cavan International Pte Ltd, the goods were deemed to be delivered. However, this was not part of the plaintiff's pleading. The plaintiff's pleading reads as follows:

> It was an express or alternatively an implied term of the oral agreement between the Plaintiff and the Defendant that the Defendant should pay the price of goods in full within a reasonable time after the receipt of the Plaintiff's invoice following the delivery of the goods to the Defendant.

From the evidence adduced, goods were never delivered in Malaysia. Further, there was evidence to show that goods were also not delivered to Cavan International Pte Ltd. The passing of ownership from seller to buyer in a contract of sale of goods is

A essential to determine: (a) who the actual owner is? (b) who has to bear the costs? and the time of passing of the risk. It must be emphasized that time of transfer of ownership is important to decide with whom the risk lays. If ownership of the property has passed to the buyer the risk of the loss, destruction etc, of the
B goods will fall on the buyer notwithstanding it may be in the seller's possession or in transit etc. The contract is deemed to be completed or performed upon delivery and acceptance of the goods by the buyer and receipt of payment from the seller. The contract of sale may specify the place, the mode, the time, the
C cost etc. of the delivery. If the contract specifies the place of delivery, the goods must be delivered at that place. The mode of delivery of goods may be actual, symbolic or constructive. The seller may deliver by any of these methods unless otherwise specifically stated in the contract of sale. Actual delivery is deemed
D to have taken place if the goods are handed over to the buyer or his authorized agent or anything has been done which has the effect of putting the goods in the possession of the buyer or his agent.

E Section 19 of SGA 1957 states:

> (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.
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> (2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.
>
> (3) Unless a different intention appears the rules contained in
G sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

The time of the transfer of property in goods is important to ascertain liability. The risk of loss or damage, unless otherwise
H agreed, *prima facie* passes with the property in them whether or not delivery has been made. Further, the seller may only sue for the price of the goods if property in them has passed.

In *Mc Entire v. Crossley Bros. Ltd.* [1895] AC 457 the question as
I to when property passes to the buyer was considered. Lord Watson observed:

> It does not in the least follow, that, because there is an agreement of sale and purchase, the property the thing which is the subject-matter of the contract has passed to the purchaser. That is a question which entirely depends upon the intention of the parties. The law permits them to settle the point for themselves by an expression of their intention upon the point.

It must be emphasized that s. 19 of SGA 1957 to a large extent gives effect to the elementary principle of the law of contract that the parties may fix the time when the property in the goods shall be treated to have passed. It may be the time of delivery, or the time of payment of price or even the time of making of the contract. It all depends upon the intention of the parties. It is, therefore, the duty of the court to ascertain the intention of the parties and in so doing the courts have to be guided by the principles laid down in s. 19(2) which provides that for ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case. (See *Agricultural Market Committee v. Shalimar Chemical Works Ltd* [1997] 5 SCC 516).

[12] I have heard the evidence and read the submissions of the parties in detail. I take the view that the plaintiffs claim must be dismissed. My reasons are as follows:

(i) I am convinced that the defendant never authorized the plaintiff to deliver the goods to Chua Brothers Transportation and/or Famous Freight Forwarders (S) Pte Ltd. If at all the authority to deliver the goods is given, it was to Cavan International Pte. Ltd. This was also not alleged in the statement of claim.

(ii) In this case the plaintiff has not called as witness Cavan International Pte. Ltd. and/or named them as a party to the suit. The place of delivery is essential for the plaintiff to succeed against the defendant.

(iii) The legal burden is on the plaintiff to establish the agreed place of delivery and the price of goods. It is my judgment that the plaintiff has failed to do so.

(iv) I am inclined to accept the defendant's version more probable as the defendant in this case if they have ordered the goods they would have taken the necessary steps to ensure that the

goods from Singapore are delivered to them. In this case this is not so as there was evidence adduced by the plaintiff themselves that the goods have not left Singapore and as a result they have arranged inspection of goods in Singapore.

[13] For reasons stated above, I dismiss the plaintiff's claim save as to the consented amount for invoice nos. 5273 and 5581 totaling to a sum of S$6,289. In consequence, I make the following orders:

(i) The defendant to pay the plaintiff the sum of S$6,289 with interest at 8% per annum from 16 July 2003 until the date of realization.

(ii) The plaintiff to pay the costs of this action. The getting up fees shall not exceed RM30,000. If costs cannot be agreed, the defendant is at liberty to tax the costs.